

BLANK ROME LLP

Todd M. Malynn (SBN 181595)

todd.malynn@blankrome.com

Arash Beral (SBN 245219)

arash.beral@blankrome.com

Jamison T. Gilmore (SBN 322100)

jamison.gilmore@blankrome.com

2029 Century Park East | 6th Floor

Los Angeles, CA 90067

Telephone: 424.239.3400

Facsimile: 424.239.3434

Attorneys for Defendants, Counterclaimants, and
Third Party Plaintiffs PCJV USA, LLC, PCI
TRADING LLC, POTATO CORNER, LA
GROUP, LLC, GK CAPITAL GROUP, LLC,
NKM CAPITAL GROUP, LLC and GUY
KOREN, and Defendants J & K AMERICANA,
LLC, J&K LAKEWOOD, LLC, J&K
OAKRIDGE, LLC, J&K VALLEY FAIR, LLC, J
& K ONTARIO, LLC, J&K PC TRUCKS, LLC,
HLK MILPITAS, LLC, and GK CERRITOS, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHAKEY'S PIZZA ASIA VENTURES,
INC, a Philippines corporation,

Plaintiff,

vs.

PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING , LLC, a
Delaware limited liability company; GUY
KOREN, an individual; POTATO CORNER
LA GROUP, LLC, a California limited
liability company; NKM CAPITAL GROUP,
LLC, a California limited liability company;
J & K AMERICANA, LLC, a California
limited liability company; J&K
LAKEWOOD, LLC, a California limited
liability company; J&K VALLEY FAIR,
LLC, a California limited liability company;
J & K ONTARIO, LLC, a California limited
liability company; HLK MILPITAS, LLC, a
California, limited liability company; GK
CERRITOS, LLC, a California, limited
liability company; J&K PC TRUCKS, LLC,
a California limited liability company; and,
GK CAPITAL GROUP, LLC, a California

Case No. 2:24-CV-04546-SB(AGRx)

Hon. Stanley Blumenfeld, Jr.

**DEFENDANTS' OBJECTION TO
PLAINTIFF'S PORTION OF
DKT. NO. 297 AND REQUEST
FOR ENTRY OF DISMISSAL
WITH PREJUDICE OF
PLAINTIFF'S TRADE SECRET
MISAPPROPRIATION CLAIM**

Complaint Filed: May 31, 2024
Trial Date: September 16,
2025

1 limited liability company and DOES 1
through 100, inclusive,

2 Defendants.

3
4 PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING LLC, a
5 Delaware limited liability company;
POTATO CORNER LA GROUP LLC, a
6 California limited liability company; GK
CAPITAL GROUP, LLC, a California
7 limited liability company; NKM CAPITAL
GROUP LLC, a California limited liability
8 company; and GUY KOREN, an individual,

9 Counter-Claimants,

10 v.

11 SHAKEY'S PIZZA ASIA VENTURES,
INC, a Philippines corporation,

12 Counter Defendant.

13
14 PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING LLC, a
15 Delaware limited liability company;
POTATO CORNER LA GROUP LLC, a
16 California limited liability company; GK
CAPITAL GROUP, LLC, a California
17 limited liability company; NKM CAPITAL
GROUP LLC, a California limited liability
18 company; and GUY KOREN, an individual,

19 Third Party Plaintiffs,

20 v.

21 PC INTERNATIONAL PTE LTD., a
Singapore business entity; SPAVI
22 INTERNATIONAL USA, INC., a California
corporation; CINCO CORPORATION, a
23 Philippines corporation; and ROES 1 through
10, inclusive,

24 Third Party Defendants.

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1 **I. INTRODUCTION**

2 Pursuant to Rule 41 of the Federal Rules of Civil Procedure, Defendants object
3 to Plaintiff's portion of Dkt. No. 297, including the surprise statement that "Plaintiff
4 has elected to forgo, and dismiss, without prejudice, its claim for trade secret
5 misappropriation arising from the packages of seasonings that were reverse
6 engineered.... Plaintiff instead will pursue the trademark infringement, and
7 separately, the false designation of origin claims...." Dkt. No. 297 at pp. 6-7. To
8 avoid prejudice to Defendants, ensure a fair trial on the merits, and avoid legal error
9 and mistrial, Defendants believe the dismissal must be with prejudice. Indeed,
10 having dismissed—on the eve of trial—its only trade secret misappropriation claim,
11 Plaintiff cannot introduce and continue to argue the claim without secrecy and other
12 requirements of the claim under a new cause of action that does not exist under state
13 or federal law or its pleadings.

14 **II. REASONS DEFENDANTS ARE OBJECTING**

15 Plaintiff is not attempting to narrow its claims; it is trying to pivot from or
16 expand them. At Dkt. No. 297, it spent 5 pages explaining why Defendants are
17 allegedly liable for misappropriation of trade secrets—all leading to the statements
18 made at pp. 6-7 that Plaintiff is dismissing the trade secret claim but "instead will
19 pursue" the other claims which "can include items that are not protectible under the
20 Lanham Act such as procedures, processes, or, *even proprietary information and*
21 *trade secrets.*" *Id.* at pp. 6-7. Plaintiff essentially is attempting to repackage its trade
22 secret misappropriation claim under a new, unpled and non-existent theory. In doing
23 so, Plaintiff seeks to shift the burden to Defendants to divert time in their defense,
24 but now without jury instructions or trade secrecy requirements (disregarding
25 federal and state preemption doctrines, including under California's Uniform Trade
26 Secrets Act ("Cal-UTSA")) to prove a defense under Cal-UTSA. Plaintiff is trying
27 to invent and introduce at trial an unpled count found nowhere in its Memorandum
28 of Contentions of Law and Fact (Dkt. No. 199), Trial Brief (Dkt. No. 255), or

1 portions of the proposed Final Pretrial Order (Dkt. No. 244) that simply relabels its
2 dismissed count for trade secret misappropriation as a “false designation of origin.”
3 There is no theory of liability under state or federal law that would allow Plaintiff to
4 avoid proving elements unique to trade secret misappropriation—which it cannot
5 prove—that would enable it to hold Defendants liable for allegedly “reverse
6 engineering” publicly available seasonings.

7 There is no pled claim for false advertising or trade dress infringement and
8 neither theory was identified in Plaintiff’s Memorandum of Contentions of Law and
9 Fact, Trial Brief, or portions of the proposed Final Pretrial Order. Plaintiff also has
10 unambiguously stated that “SPAVI Parties are no longer pursuing the claim for
11 unregistered trademarks.” Dkt. No. 282-2 at 171. That leaves only trademark
12 infringement upon which to instruct the jury—whether under 15 U.S.C. § 1114
13 (registered trademark), 15 U.S.C. § 1125(a) (false designation of origin) or state law
14 (common law or Bus. & Prof. Code § 17200), with the caveat that any favorable
15 trademark presumptions only apply under 15 U.S.C. § 1114.

16 Yet, Plaintiff argues that its new claim challenging “reverse engineering” as a
17 “false designation of origin” is cognizable under the law, citing two cases, *Int’l Ord.*
18 *of Job’s Daughters v. Lindeburg & Co.*, 633 F.2d 912 (9th Cir. 1980) and *JUUL*
19 *Labs, Inc. v. Chou*, 557 F. Supp. 3d 1041 (C.D. Cal. 2021). Those cases, in fact,
20 support the opposite conclusion in accord with settled law. Nevertheless, Plaintiff
21 presents its newly fashioned claim as a “fallback” position that would somehow
22 survive losing at trial on its trademark infringement counts, which is not true and
23 would only result in mistrial if permitted and accepted by the jury.

24 Plaintiff further argues in the joint report at Dkt. No. 297:

25 Although Plaintiff is confident it will prevail over Defendants’ nearly
26 impossible task of proving by clear and convincing evidence that naked
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1 licensing occurred, or an assignment in gross,^[1] however, in the off
2 chance that the jury goes sideways on those issues, false designation can
3 still remain a theory of liability if a claim that requires registered
4 trademarks goes down. Such a false designation theory will place,
5 prominently, the act of reverse engineering, the lack of authority, the
6 secrecy and clandestine nature of the adventure, and the use of these
7 flavors to claim to be Potato Corner. This is the most appropriate place to
8 present the jury with that aspect of the fact pattern – although it was
9 indeed the theft of a trade secret.” Dkt. No. 297 at p. 7.

10 There is no precedent for Plaintiff’s “fallback” position, which neither *Int’l*
11 *Ord. of Job’s Daughters* nor *JUUL Labs, Inc.* support. Nor has Plaintiff pled or
12 prosecuted a trade dress claim that, regardless, could not support liability for
13 allegedly creating a non-secret, wholly functionable spice. Should Plaintiff fail to
14 meet its burden of proof on ownership or transfer of the goodwill associated with
15 Potato Corner USA’s “restaurant and catering services” symbolized by the
16 registered trademarks, or fail to prove ownership free and clear of a long-term
17 trademark license or simply one it could terminate “at-will” on May 31, 2024, any
18 unpled trade dress claim as to the “look” of the same Potato Corner USA’s quick-
19 service restaurants will also fail by law.

20 Defendants’ ownership, right to control, or use the U.S. Potato Corner marks,
21 which are part of the unpled trade dress and inextricably part of the goodwill
22 Defendants created in the Potato Corner USA quick-service restaurant franchise
23 business, was for the mutual benefit of PCJV’s joint venture partners. Defendants’
24 vested ownership, responsibility to control or right to use the U.S. trademarks could
25 not have been transferred to Plaintiff because, for example, the associated goodwill
26 of the business created by PCJV was never transferred to Plaintiff. And even if the
27 goodwill was somehow impossibly transferred to Plaintiff, it was subject to pre-
28 existing use or control rights vested in PCJV USA Parties. Either way, the alleged

¹ Defendants believe that the Court’s Order (Dkt. No. 296) is correct and astute that Plaintiff bears the burden of proof on ownership, including by proving a transfer of relevant goodwill via a purported trademark assignment.

1 “reverse engineering” of seasonings is not actionable. It only wastes time and
2 unduly prejudices Defendants by trying to remove Plaintiff’s obligation under Cal-
3 UTSA to prove secrecy and other essential elements of a trade secret claim, so as to
4 establish liability for unfair competition. It is unduly prejudicial, risks mistrial and
5 should be rejected.²

6 **III. ALLOWING PLAINTIFF TO REPACKAGE ITS TRADE SECRET**
7 **CLAIM UNDER THE LANHAM ACT WOULD CAUSE PREJUDICE**

8 The Lanham Act does not protect ideas, processes, or functional features—
9 those are the domain of patent or trade secret law, both of which preempt other
10 claims. *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 168 (1989)
11 (unanimously holding that Florida statute creating cause of action protecting
12 disclosed boat designs preempted by Patent Act); Dkt. No. 99 (dismissing Plaintiff’s
13 claim for breach of confidence claim as preempted) (citing *K.C. Multimedia, Inc. v.*
14 *Bank of Am. Tech. & Operations, Inc.*, 171 Cal. App. 4th 939, 958 (2009)). The
15 Lanham Act cannot be used as a substitute for trade secret law. *Digital Envoy, Inc.*
16 *v. Google, Inc.*, 2005 WL 8162639, at *2 n. 2 (N.D. Cal. July 15, 2005) (finding
17 claim that “simply restates the trade secrets claim...does not give rise to Lanham
18 Act claim....”); *Wolf v. Louis Marx & Co.*, No. 78 Civ. 2018, 1978 WL 21366, at *4
19 (S.D.N.Y. Oct. 2, 1978) (dismissing Lanham Act claims because “Plaintiffs cannot
20 bootstrap their state law claims of trade secret misappropriation into a federal cause
21 of action.”). In cases where litigants have attempted to plead a claim under federal
22 law in an attempt to get around Cal-UTSA preemption, federal courts have similarly
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24 ² Plaintiff’s dismissal and response to Dkt. No. 294 also concedes that, all along,
25 Plaintiff had based its Cal-UTSA claim on protected speech in Franchise Disclosure
26 Documents (which do not even say what Plaintiff thought they say) and, after
27 Plaintiff realized that its approach is subject to attack (because it was relying on the
28 FDD statements for presenting a trade secret claim while also claiming that the FDD
statements are “fraudulent”), Plaintiff now is trying to walk away from and reject
the FDDs all together because it now realizes a risk of loss through the FDD
evidence. Removing the trade secret claim does just that.

(and under the same logic) rejected those efforts. *See McCandless Grp., LLC v. Coy Collective, Inc.*, No. 221CV02069DOCKES, 2022 WL 2167686, at *5 (C.D. Cal. Feb. 14, 2022) (plaintiff “cannot circumvent CUTSA preemption by asserting a claim under DTSA”); *see also Agile Sourcing v. Dempsey*, 2021 U.S. Dist. LEXIS 204631, at *22 (C.D. Cal. July 15, 2021) (although filing under DTSA, “[t]he fact that Plaintiff has chosen not to plead a violation of CUTSA does not change the law’s preemptive effect on its tort claims”).

It also is well settled that there is no claim under either the Copyright Act or Lanham Act for allegedly infringing food recipes (which also is divorced from the evidence here as no party ever had any recipes)—which are freely copiable ideas. Recipes are not protectable Copyright expression. *See* 17 U.S.C.A. § 101; *Bikram’s Yoga Coll. Of India, L.P. v. Evolation Yoga, LLC*, 803 F.3d 1032, 1040 (9th Cir. 2015); *Kim Seng Co. v. J & A Importers, Inc.*, 810 F.Supp.2d 1046, 1052-55 (C.D. Cal. 2011); *Miracle Blade, LLC v. Ebrands Commerce Group, LLC.*, 207 F.Supp.2d 1136, 1150-51 (D. Nev. 2002). Nor are they a public “word, term, name, symbol, or device, or any combination thereof,” or a “false designation of origin.” 15 U.S.C. § 1125(a); *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1506 (9th Cir. 2002) (“[U]nique arrangements of purely functional features constitute a functional design’ not entitled as a matter of law to protection under the Lanham Act.”); *Big Island Candies, Inc. v. Cookie Corner*, 269 F.Supp.2d 1236, 1247-48 (D. Hi. 2003) (holding that recipes and food flavorings fail to meet distinctiveness requirement for trade dress protection).

Even the cases Plaintiff cites for the proposition that it can assert a “fallback” claim for “reverse engineering” an alleged trade secret under the Lanham Act establish the opposite and support *Defendants’* position. Namely, *Int’l Ord.* states “the test for false designation of origin [is] similar to that for infringement of a registered trademark under 15 U.S.C. § 1114.” *Int’l Ord. of Job’s Daughters*, 633

1 F.2d at 917. Likewise, *JULL Labs* states “[t]he elements for establishing unfair
2 competition under California Business and Professions Code § 17200 by trademark
3 infringement and common law trademark infringement are essentially the same as
4 those for the Lanham Act.” *JUUL Labs, Inc.*, 557 F. Supp. 3d at 1053-54.

5 In reversing a judgment for false designation of origin, the Ninth Circuit in
6 *Int’l Ord.* explained why neither the Lanham Act nor state law unfair competition
7 claims protect food flavors: “[t]rademark law is concerned only with identification
8 of the maker, sponsor, or endorser of the product so as to avoid confusing
9 consumers. Trademark law does not prevent a person from copying so-called
10 ‘functional’ features of a product which constitute the actual benefit that the
11 consumer wishes to purchase, as distinguished from an assurance that a particular
12 entity made, sponsored, or endorsed a product.” 633 F.2d at 917. Any alleged
13 likelihood of confusion arising from a functional feature and actual benefit a
14 consumer wishes to purchase is not actionable. *Id.* at 917-20.

15 **A. Plaintiff’s Request for Dismissal of its Trade Secret Claim Should**
16 **be With Prejudice**

17 Courts routinely dismiss claims with prejudice when the dismissal is sought on
18 the eve of trial after the close of discovery. *See, e.g., SPS Tech., LLC v. Briles*
19 *Aerospace, Inc.*, Case No. CV 18-9536-MWF (ASx), 2021 WL 5779940, at *3-4
20 (C.D. Cal. Nov. 15, 2021) (dismissing with prejudice at the eve of trial); *Scoma v.*
21 *City of New York*, 16-CV-6693 (KAM)(SJB) 2021 WL 1784385, at *3, 17
22 (E.D.N.Y. May 4, 2021) (same); *Bradford Co. v. Afco Mfg.*, Case No. 1:05-CV-449,
23 2009 WL 10679444, at *3 (S.D. Ohio June 22, 2009) (same); *Evenflo Co., Inc. v.*
24 *Augustine*, Case No.: 14-CV-1630-AJB-JLB, 2015 WL 7568663, at *5-7 (S.D. Cal.
25 Nov. 24, 2015) (dismissing with prejudice after close of fact discovery). “Rule 41
26 vests the district court with discretion to dismiss an action at the plaintiff’s instance
27 ‘upon such terms and conditions as the court deems proper. That broad grant of
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1 discretion does not contain a preference for one kind of dismissal or another.”
2 *Diamond State Ins. Co. v. Genesis Ins. Co.*, 379 F.App’x 671, 673 (9th Cir. 2010)
3 (affirming dismissal with prejudice despite plaintiff asking for dismissal without
4 prejudice); *Hargis v. Foster*, 312 F.3d 404, 407 (9th Cir. 2002) (affirming dismissal
5 with prejudice despite plaintiff asking for dismissal without specifying without
6 prejudice and later objecting to dismissal with prejudice).

7 Prior to the eve of trial, “courts generally allow dismissal without prejudice
8 unless the defendant will suffer...prejudice to some legal interest, some legal claim,
9 [or] some legal argument.” *In re Sizzler Restaurants Intern., Inc.*, 262 B.R. 811,
10 820 (Bankr. C.D. Cal. 2001). Factors used to determine whether to enter a dismissal
11 with prejudice include “(1) whether the defendants expended efforts or made
12 preparations that would be undermined by granting withdrawal, (2) the plaintiff’s
13 delay in prosecuting the action, (3) the adequacy of the plaintiff’s explanation for
14 why withdrawal is necessary, and (4) the stage of the litigation at the time the
15 request is made.” *Cohen v. Chanin*, Case No. 2:18-cv-06186-MCS-AS, 2020 WL
16 10758583, at *1 (C.D. Cal. Dec. 21, 2020).

17 **1. Plaintiff Unreasonably Delayed Prosecuting Its Claims**

18 In *Cohen*, the court declined to grant an eve-of-trial request for dismissal
19 without prejudice because the defendant’s expenditures were “more than nominal,”
20 and because the plaintiffs did not diligently prosecute their case. 2020 WL
21 10758583. at *2. In spite of efforts to fault the defendant for delays, the plaintiffs
22 had failed their obligation to diligently move the case forward, even in response to
23 defendants’ purported gamesmanship. *Id.* Plaintiff has engaged in dilatory conduct
24 similar to the plaintiffs in *Cohen* and this Court has found it was not diligent. Like
25 the plaintiff’s “months-long delays in the discovery phase” in *Cohen*, “Plaintiff
26 waited more than five months (until February 14, 2025—a month before the close of
27 fact discovery) to propound its first and only written fact discovery—a single set of
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1 requests for production.” Dkt. No. 294 at 1 n. 1. These facts “provide further
2 support for the Court’s finding that Plaintiff had not been diligent.” *Id.*

3 **2. Dismissal Without Prejudice Would Be Prejudicial**

4 Defendants have worked diligently to prepare for trial, including defense of
5 Plaintiff’s trade secret claim. Defendants propounded written discovery on SPAVI’s
6 trade secret claim, which was followed by meet and confer efforts and a discovery
7 conference in order to obtain that discovery and a trade secret disclosure which, in
8 Defendants’ view, was woefully deficient and did not even identify the
9 “information” claimed to have been misappropriated; neither “seasoning packages”
10 nor the spices inside them are “information,” they are “things.” Defendants have
11 worked hundreds of hours in preparing for trial, meeting and conferring, preparing
12 jury instructions, verdict forms, exhibits, and other pre-trial filings. *See, e.g.*, Dkt.
13 Nos. 229, 230, 231, 233, 237, 243, 244, 245, 246, 247, 257, 258, 260, 265, 266, 271,
14 282-2, 290, 297. These actions far exceed what is required to warrant dismissal with
15 prejudice and awarding costs and fees in preparing for trial, which should be
16 awarded or Defendants should have the opportunity to recover after trial. *See, e.g.*,
17 *Chavez v. Huhtamaki, Inc.*, Case No. 2:21-cv-01073-ODW (JEMx), 2021 WL
18 4441976, at *2 (C.D. Cal. Sept. 28, 2021) (finding cost of removal, opposing motion
19 to remand, conducting written discovery, conducting one deposition, and filing
20 second removal was sufficient to establish Rule 41 prejudice).

21 Further, Plaintiff’s effort at repackaging its trade secret claim into a false
22 designation of origin claim would only allow Plaintiff to dispense with the legal
23 requirements to prove secrecy and wrongdoing. Plaintiff plainly admitted the
24 elements between these two claims substantially differ. *See* Dkt. No. 282-2 at 23-35
25 and 56-63. If dismissed without prejudice, Plaintiff will be able to avoid proving
26 necessary elements under Cal-UTSA, such as the existence of a trade secret and use
27 of reasonable efforts to maintain secrecy, that are not required under its false
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1 designation of origin claim. At the same time, Plaintiff will exploit its trade secret
2 claim effectively tried under a different standard. Plaintiff should not be allowed to
3 benefit from a dismissal without prejudice that would put Defendants in an
4 impossible position of having to still vindicate themselves, but without jury
5 instructions on the elements of a trade secret misappropriation claim.

6 **3. Plaintiff Knew It Could Not Prevail Under Cal-UTSA, Fully**
7 **Justifying Dismissal with Prejudice**

8 Defendants had the right under Rule 50(a) or after trial to prevail and seek fees
9 under Cal-UTSA. That right is now being prejudiced for the reasons below.

10 **a. The Non-Existence of a Disclosed Trade Secret**

11 Plaintiff's burden was to "identify the trade secrets and carry the burden of
12 showing they exist." *Imax Corp. v. Cinema Techs., Inc.*, 152 F.3d 1161, 1164 (9th
13 Cir. 1998) (citing *MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 522 (9th
14 Cir. 1993)). Trade secrets comprise "information, including a formula, pattern,
15 compilation, program, device, method, technique, or process." Cal. Civ. Code
16 § 3426.1(d). To be actionable, they must be identified with reasonable particularity
17 to separate them "from matters of general knowledge in the trade or of special
18 knowledge of those persons skilled in the trade." *Imax Corp.*, 152 F.3d at 1164
19 (quoting *Universal Analytics v. MacNeal-Schwendler Corp.*, 707 F.Supp. 1170,
20 1177 (C.D.Cal.1989), *aff'd*, 914 F.2d 1256 (9th Cir.1990)).

21 No "trade secret" was ever disclosed. The only alleged "secret" Plaintiff has
22 ever identified were "items" (the seasonings) that acquired from third party Ferna
23 Corporation ("Ferna") and resold at a profit. Food flavors, resold in seasoning
24 packages, are not protectable trade secrets. *See Hutchison v. KFC Corp.*, 883 F.
25 Supp. 517, 520 (D. Nev. 1993), *aff'd*, 51 F.3d 280, 520 (9th Cir. 1995) ("[T]he
26 desired flavoring" for fried chicken was not protectible trade secret); *Buffets, Inc. v.*
27 *Klinke*, 73 F.3d 965, 968 (9th Cir. 1996) (holding under Washington law that flavors
28

1 of barbecue chicken and macaroni were not entitled to trade secret protection).³ Nor
2 is creating new seasonings based on reverse engineering actionable. *See Chicago*
3 *Lock Co. v. Fanberg*, 676 F.2d 400, 405 (9th Cir. 1982) (“A lock purchaser’s own
4 reverse-engineering of his own lock, and subsequent publication of the serial
5 number-key code correlation, is an example of the independent invention and
6 reverse engineering expressly allowed by trade secret doctrine.”); *Yeiser Rsch. &*
7 *Dev. LLC v. Teknor Apex Co.*, 281 F.Supp. 3d 1021 (S.D. Cal. 2017) (Ability to
8 ascertain information by reverse engineering “defeats the existence of a trade
9 secret.”); *Sinclair v. Aquarius Elecs., Inc.*, 42 Cal. App. 3d 216, 226 (1974) (“It is
10 well recognized that a trade secret does not offer protection against discovery by fair
11 and honest means such as by independent invention, accidental disclosure or by so-
12 called reverse engineering, that is, starting with the known product and working
13 backward to divine the process.”).

14 Courts routinely grant summary judgment against trade secret claims for
15 failure to sufficiently identify a trade secret. *E.g., Imax Corp.*, 152 F.3d at 1164
16 (affirming summary judgment because plaintiff “failed to carry its burden of
17 identifying for the court exactly what it claimed as trade secrets”); *accord Agency*
18 *Solutions.Com, LLC v. TriZetto Grp., Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal.
19 2011) (“Proprietary ways of doing the same thing that others in the same field do
20 are not trade secrets”); *CTC Glob. Corp. v. Huang*, No. SACV 1702202AGKESX,
21 2019 WL 4148184, at *5 (C.D. Cal. July 29, 2019) (“CTC’s broad and conclusory
22 allegations regarding its pretension and encapsulation trade secrets are fatally
23 nonspecific...CTC acknowledges that [they] were methods ‘known in the industry,’
24

25 ³ Even in cases, *unlike this case*, involving the actual improper disclosure of alleged
26 trade secret food recipes, recipes whose origins are well known or easily duplicated
27 have been found not trade secret. *See Buffets, Inc.*, 73 F.3d at 968 (holding that
28 disclosed recipes were not entitled to trade secret protection because, although more
detailed than those of competitors, they “had their origins in well-known American
cuisine” and could be easily discovered by others).

1 and it hasn't adequately distinguished between its allegedly protected methods and
2 those that were publicly available.”).

3 **b. Prior and Subsequent Public Disclosure of the Alleged**
4 **Trade Secrets**

5 Plaintiff could not meet its burden of proof under Cal-UTSA for a second
6 reason: The alleged trade secrets freely fell into the public domain long before any
7 dispute arose, including before Plaintiff's alleged transaction with Cinco, and
8 continue to be in the public domain.

9 Under California law, once information is released to the public, such as
10 product labeling of ingredients and the contents of seasoning packages, it cannot
11 later become a trade secret. *See In re Providian Credit Card Cases*, 96 Cal. App. 4th
12 292, 304 (2002) (“Public disclosure, that is the absence of secrecy, is fatal to the
13 existence of a trade secret.”); *Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1523
14 (1997) (to qualify as a trade secret, the information shall not be “generally known to
15 the public”). “If an individual discloses his trade secret to others who are under no
16 obligation to protect the confidentiality of the information, or otherwise publicly
17 discloses the secret, his property right is extinguished.” *In re Providian Credit*
18 *Card Cases*, 96 Cal. App. 4th at 304 (quoting *Ruckelshaus v. Monsanto Co.*, 467
19 U.S. 986, 1002 (1984)). Public disclosure extinguishes any protectable trade secret
20 status. *Attia v. Google LLC*, 983 F.3d 420, 425-426 (9th Cir. 2020).

21 A basic Google search for “Potato Corner seasonings” alone leads to a popular
22 e-commerce website in the Philippines selling the seasonings as the “second result”
23 following Potato Corner's own website: [https://pasabuystore.com/products/potato-](https://pasabuystore.com/products/potato-corner-powder-seasoning-220g)
24 [corner-powder-seasoning-220g](https://pasabuystore.com/products/potato-corner-powder-seasoning-220g). A click of “Google Images” on the same search
25 leads to an array of websites selling the packages (with Ferna's name, the product
26 ingredients, nutritional facts, *etc.* displayed everywhere). Ferna also sells its own
27 product all over the internet, including on “Lazada” (the “Amazon of Southeast
28

Asia”): <https://www.lazada.com.ph/tag/ferna-powder-for-fries-potato-corner/>.⁴ The examples are plenty. *See* Dkt. No. 48-10; Trial Exh. No. 1158; *see also* <https://www.ebay.com/itm/224228725145>, <https://nggsupply.com/products/copy-of-potato-corner-cheese-seasoning-powder-220grams>, *etc.*

There also are public web pages, such as Reddit, and apps like TikTok, where consumers have determined the recipes themselves. One Redditor posted: “I know they sell the seasoning online but I’m sure I would have most of the seasonings at home and it’d be more convenient for me. Cousin used to work there and only remember there being a ton of msg?” In response, another Redditor noted that the Chili BBQ powder is “1 tsp Larry’s French fry seasoning 1 tsp MSG 1 tablespoon sugar 1/2 tsp cayenne pepper 1/2 tsp black pepper.” [Reddit link](#).

c. PCJV USA, LLC Owns Its Own Intellectual Property

Plaintiff could not meet its burden of proof on its trade secret claim for a third reason: Plaintiff did not produce or include on the Exhibit List any alleged trade secret license covering Plaintiff’s commercial sales of Ferna’s supplied seasoning packages, and therefore Plaintiff could not establish the essential element of “ownership” under Cal-UTSA. To prove the essential element of trade secret ownership, Plaintiff had to establish with documentary evidence title to the alleged trade secrets or a right to sue under a trade secret license. *See BladeRoom Grp. Ltd. v. Facebook, Inc.*, 219 F. Supp. 3d 984, 990 (N.D. Cal. 2017) (trade secret licensee may assert claim under Cal-UTSA when license obligates licensee to “maintain the

⁴ Sometime after Plaintiff filed this lawsuit, Ferna began selling its seasonings online in non-descript packages, such as the ones shown on Lazada.com’s website and on its own FernaUSA.com website, but also sold on Lazada.com and elsewhere the seasonings bearing Potato Corner packaging. They are the same exact thing. It is clear to Defendants that as litigation maneuver, Plaintiff attempted but failed to cloak these decades-long publicly available seasonings into the “trade secret” category. It bears noting that Potato Corner’s roots in 1992 was born out of Ricky Montelibano’s (one of the Cinco Group’s members, and Magsaysay’s brother-in-law) flavored popcorn business where he, too, purchased publicly available seasonings and sold powdered popcorn.

1 confidentiality of the secrets” and implement “mechanisms to limit the public
2 disclosure of confidential information.”); *Sinclair v. Aquarius Electronics, Inc.*, 42
3 Cal.App.3d 216, 225-28 (1974) (trade secret licensing involves sharing sensitive,
4 undisclosed information). Secondary evidence is insufficient to establish ownership
5 or the existence of a trade-secret license. *See Hanks v. Anderson*, No. 2:19-CV-
6 00999-DBB-JCB, 2024 WL 4092949, at *10 (D. Utah Sept. 5, 2024) (finding “a
7 lack of evidence in the record” to “meet[] the ownership requirement” as
8 “confidentiality provision” in referenced membership interest purchase agreement
9 “[did] not mention any alleged trade secrets or their ownership”). Plaintiff’s failure
10 to identify or produce any agreements demonstrating an ownership of the alleged
11 trade secrets shows (at best) Plaintiff does not own the trade secrets and (most
12 certainly) Plaintiff brought an objectively specious claim in bad faith.

13 **d. Reasonable Steps to Preserve Secrecy Were Not Taken**

14 Plaintiff also could not make a *prima facie* case that Plaintiff, Cinco, and their
15 suppliers ever undertook reasonable steps to keep seasoning packages secret. Trade
16 secret protection is lost if reasonable steps are not taken to protect secrecy. *See*
17 *Buffets, Inc.*, 73 F.3d at 969 (holding that “job manuals were not trade secrets as
18 they were not the subject of reasonable efforts to maintain their secrecy.”);
19 *SkinMedica, Inc. v. Histogen Inc.*, 869 F. Supp. 2d 1176, 1193 (S.D. Cal. 2012)
20 (“[I]nformation is secret where it is not generally known, and where the owner has
21 taken “efforts that are reasonable under the circumstances to maintain its secrecy.”).

22 In this case, nobody in the supply chain treated, or took reasonable steps to
23 treat, commercially sold seasoning packages as trade secret. As already shown, the
24 original supplier (Ferna) did not take reasonable steps to allegedly maintain secrecy
25 of publicly sold seasonings, nor did Cinco take reasonable steps to allegedly
26 maintain secrecy of publicly sold seasonings. Plaintiff did not take reasonable steps
27 to allegedly maintain secrecy of publicly sold seasonings either.

1 For example, is undisputed that after March 2022, Plaintiff did not enter into
2 any confidentiality agreement with Defendants, while selling the seasonings to
3 Defendants for *two and a half years*. After Plaintiff denied assuming any contractual
4 or fiduciary obligations to or from Defendants, Plaintiff freely sold and delivered
5 seasoning packages to defendant PCI Trading, LLC all the way through July 2024,
6 even after it allegedly “terminated” an “implied” license on May 31, 2024. Once
7 those goods properly changed hands, there was no restriction on the use of those
8 goods under the first sale doctrine applicable under Cal-UTSA and the Lanham Act.
9 *See* Cal. Civ. Code § 3426.1(a); *Bluetooth SIG Inc. v. FCA US LLC*, 30 F.4th 870,
10 872 (9th Cir. 2022) (recognizing it is well settled that the “right of a producer to
11 control the distribution of its trademarked product does not extend beyond the first
12 sale of the product....”). Plaintiff’s affiliate also accepted a second purchase order in
13 July 2024 well after Plaintiff allegedly “terminated” an “implied” license before
14 Plaintiff reneged on the purchase order in September 2024, as yet another bad-faith
15 litigation maneuver. *See* Dkt. No. 37. Plaintiff’s affiliate (Highfive Corporation),
16 whose name appears on the seasoning packages as the distributor of Ferna’s
17 seasonings, was among the many signatory releasors in the 2024 Settlement and
18 Release Agreement executed by the parties. *See* Trial Exh. 1172.

19 **B. Plaintiff Has Waived Any Unpled Claim for False Designation of**
20 **Origin Based on Trade Dress or “Reverse Engineering”**

21 There also is no basis to proceed under the Lanham Act for “reverse
22 engineering” or trade dress infringement. There is no trade dress claim in this case.
23 No trade dress claim was pled or included in Plaintiff’s Memorandum of
24 Contentions of Law and Fact (Dkt. No. 199), Trial Brief (Dkt. No. 255), portion of
25 the Final Pretrial Conference Order (Dkt. No. 244). A trade dress infringement
26 claim must allege specific facts for each element of the alleged trade dress,
27 including that the trade dress is nonfunctional. *R and A Synergy LLC v. Spanx, Inc.*,
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1 Case No. 2:17-cv-09147-SCW-AS, 2019 U.S. Dist. LEXIS 168266, at *9-10 (C.D.
2 Cal. May 1, 2019). Further, a trade dress infringement claim not only must assert
3 that the trade dress is distinctive, but with respect to an alleged design or packaging,
4 also plead and prove secondary meaning of the alleged trade dress. *Id.* at *21-25.
5 Plaintiff has done none of these things. And none of these elements were identified
6 as “issues” in the proposed Final Pretrial Conference order.

7 Similarly, there is no false designation of origin claim based on “reverse
8 engineering” pled or included in Plaintiff’s Memorandum of Contentions of Law
9 and Fact (Dkt. No. 199), Trial Brief (Dkt. No. 255), portion of the Final Pretrial
10 Conference Order (Dkt. No. 244), and for good reason. Even if Plaintiff had pled
11 and prosecuted a trade dress claim, it would neither (a) involve whether Defendants
12 successfully or unsuccessfully copied functional and publicly available spices or (b)
13 survive an adverse ruling on Plaintiff’s trademark claims, which will resolve who
14 has superior claims to own, control or use the goodwill also symbolized by any
15 trade dress promoting Potato Corner USA’s restaurants.

16 **IV. CONCLUSION**

17 For the foregoing reasons, Defendants respectfully object and request that
18 Plaintiff’s claim for misappropriation of trade secrets be dismissed with prejudice
19 and Plaintiff be precluded from repackaging its dismissed claim for “reverse
20 engineering” publicly available seasoning packages as wrongful under the Lanham
21 Act. Defendants further request recovery of their fees and costs subject to further
22 briefing either under Rule 41 or under Cal-UTSA, or both.

1 DATED: September 12, 2025 **BLANK ROME LLP**

2
3 By: */s/ Todd M. Malynn*

4 Todd M. Malynn

Arash Beral

Jamison T. Gilmore

5 Attorneys for Defendants, Counterclaimants,
6 and Third Party Plaintiffs PCJV USA, LLC,
7 PCI TRADING LLC, POTATO CORNER,
8 LA GROUP, LLC, GK CAPITAL GROUP,
9 LLC, NKM CAPITAL GROUP, LLC and
10 GUY KOREN, and Defendants J & K
11 AMERICANA, LLC, J&K LAKEWOOD,
12 LLC, J&K OAKRIDGE, LLC, J&K
13 VALLEY FAIR, LLC, J & K ONTARIO,
14 LLC, J&K PC TRUCKS, LLC, HLK
15 MILPITAS, LLC, and GK CERRITOS, LLC
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CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for PCJV USA Parties, certify that this brief contains 4,973 words, which complies with the word limit of Local Rule 11-6.1.

DATED: September 12, 2025

/s/ Todd M. Malynn

TODD M. MALYNN

CERTIFICATE OF SERVICE

The undersigned certifies that on September 12, 2025, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court's Electronic Case Filing (ECF) system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.
Executed on September 12, 2025.

By: /s/AJ Cruickshank